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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 217

THE GUARANTY TRUST COMPANY OF NEW YORK, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HARRIET D. SEWELL, DECEASED, APPELLANT,

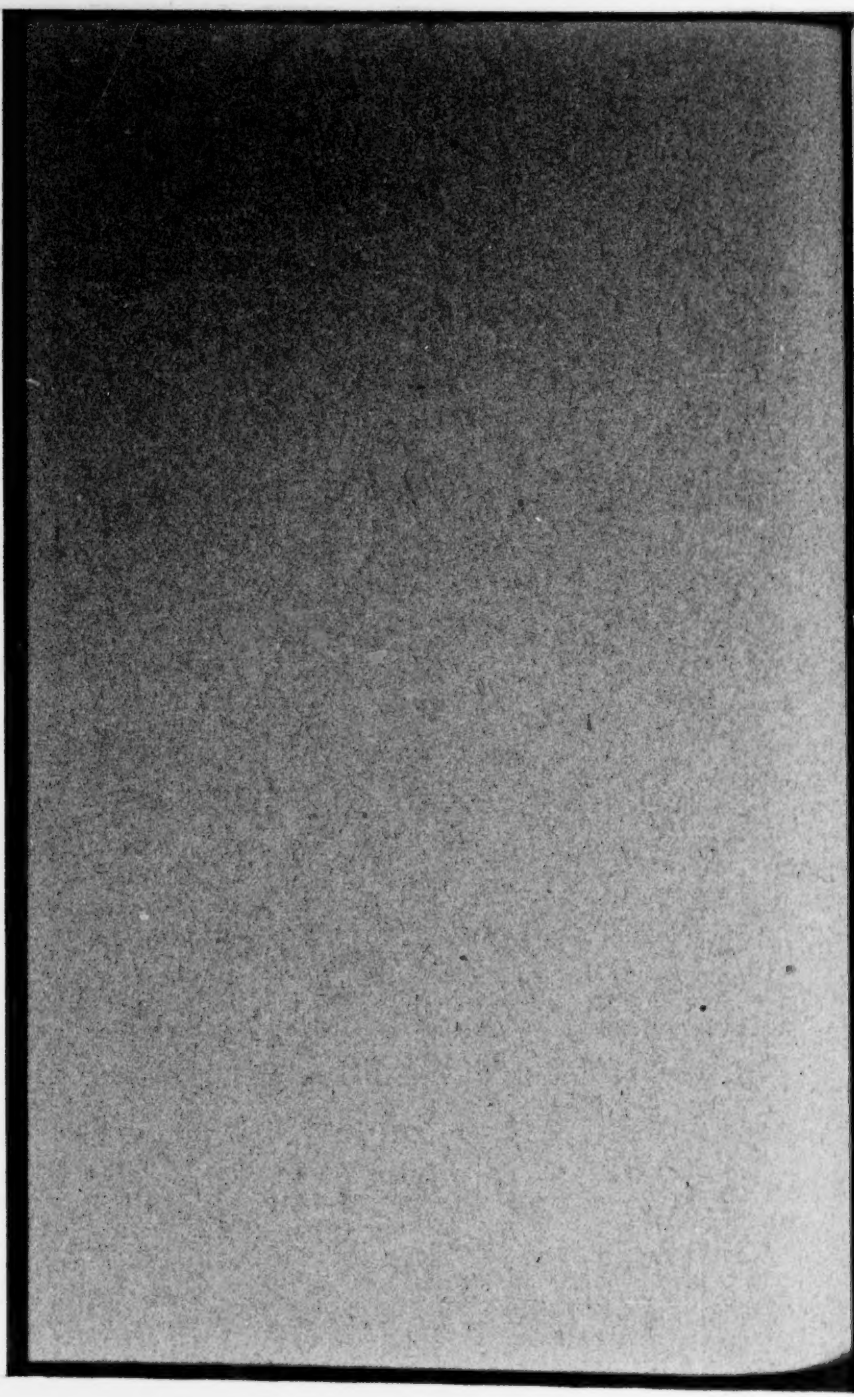
vs.

WILLIAM H. BLODGETT, TAX COMMISSIONER

APPEAL FROM THE SUPERIOR COURT OF FAIRFIELD COUNTY, STATE OF CONNECTICUT

FILED JULY 12, 1932

(36,914)



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[fol. 1] [Caption omitted]

IN PROBATE COURT OF DISTRICT OF GREENWICH

PETITION FOR APPEAL

To the Probate Court for the District of Greenwich:

Estate of Harriet D. Sewell, late of Greenwich, within said District, deceased.

The subscriber represents that:

1. He is the Tax Commissioner of the State of Connecticut and as such is interested in said estate.

2. On the 11th day of December, 1930, this Court made the following order and decree, namely, that a certain transfer of property in trust made by said decedent by instrument executed December 28, 1926, is not subject to the Connecticut succession tax.

3. The subscriber is aggrieved by said order and decree [fol. 2] of this court.

Wherefore the subscriber moves an appeal and does hereby appeal from said order and decree to the Superior Court to be held at Bridgeport within and for the County of Fairfield on the first Tuesday of February, 1931, and herewith gives a bond with sufficient surety to prosecute said appeal to effect.

Dated at Hartford this 29th day of December, 1930.

William H. Blodgett, Tax Commissioner, by Farwell Knapp, His Attorney.

(Filed Jan. 28, 1931. Michael J. Flanagan, Clerk.)

Bond on appeal for $100.00 omitted in printing.

IN PROBATE COURT OF DISTRICT OF GREENWICH

ORDER ALLOWING APPEAL

At a Court of Probate, held at Greenwich, within and for the District of Greenwich, on the 30th day of December, A. D. 1930.

Present: Stephen L. Radford, Esquire, Judge.

Estate of Harriet Denmead Sewell, Late of Greenwich, in said District, Deceased

Now comes William H. Blodgett, Tax Commissioner of the State of Connecticut, who states that he is aggrieved by the order and decree of this Court made on the 11th day of December, 1930, finding that a certain transfer of property in trust made by said decedent is not subject to the [fol. 3] Connecticut succession tax, and moves an appeal from said order and decree to the Superior Court to be held within and for Fairfield County on the first Tuesday of February, 1931, and has offered a good and sufficient bond in the sum of One Hundred ($100) Dollars with Farwell Knapp as surety conditioned to pay all costs in case it fails to make its said plea good.

Now therefore, it is ordered, adjudged and decreed that the said appeal be and the same hereby is allowed, the said bond accepted and that notice of said appeal be given by some proper officer or indifferent person, by mailing a true and attested copy of the appeal, bond and order, by registered mail, to the Executor under the will of said deceased, at least twelve days before the return day of said appeal and return of the notice so given be made to said Superior Court.

Stephen L. Randford, Judge.

(Filed Jan. 28, 1931. Michael J. Flanagan, Clerk.)

In Probate Court of District of Greenwich

Reasons of Appeal

Appellant hereby sets out as his reasons of appeal the following:

The Probate Court for the District of Greenwich in its decree of December 11th, 1930, erred.

(1) In deciding that the transfer of property by deed of trust executed by the decedent December 28th, 1926, is not subject to the Connecticut succession tax.

(2) In deciding that said transfer was not made or intended to take effect in possession or enjoyment at or after the death of the donor.

William H. Blodgett, Tax Commissioner, Appellant, by Warren B. Burrows, Attorney General; Farwell Knapp, Assistant Tax Commissioner, His Attorneys.

(Filed Feb. 7, 1931. Michael J. Flanagan, Clerk.)

In Superior Court of Fairfield County

Stipulation of Facts and Questions of Law—Filed April 16, 1931

The parties to the above entitled action hereby stipulate that the facts are as follows:

(1) Harriet D. Sewell died May 20th, 1930, a resident of and domiciled in the Town of Greenwich, County of Fairfield and State of Connecticut, leaving a will dated January 25th, 1927, which will was duly proved and approved by the Probate Court for the District of Greenwich and the Guaranty Trust Company of New York, the executor [fol. 4] named therein, qualified and is now acting as such.

(2) On December 28th, 1926 the decedent and the Guaranty Trust Company of New York duly executed and delivered each to the other an indenture a copy whereof is hereto annexed, marked "Exhibit A". That contemporaneously with the execution and delivery of said instrument, the decedent delivered to said Guaranty Trust Company the securities mentioned in the schedule annexed to said instrument. That immediately thereafter the said Guaranty Trust Company entered upon the performance of its duties under said trust instrument and has ever since said date been in possession of said securities.

(3) That said transfer was not made by the decedent in contemplation of death.

(4) William B. Sewell named in said indenture was the husband of said decedent and survived her.

(5) Madeleine Sewell Barjou named in said indenture was the daughter of said decedent and survived her.

(6) On September 12th, 1930, the executor filed with the Probate Court for the District of Greenwich, in accordance with the provisions of section 1380 (b) of the general statutes, a copy of said indenture (Exhibit A) and a list of the securities constituting the trust fund and their values as of May 20th, 1930. A copy of said list of securities is annexed hereto and marked "Exhibit B."

(7) Said Probate Court in accordance with the provisions of said statute forwarded copies of Exhibits A and B to the Tax Commissioner, Appellant herein.

(8) The Tax Commissioner, appellant herein, did not concede the nontaxability of said transfers, and thereafter and within the time limited in said statute, said Probate Court set a time and place for a hearing as to the taxability of said transfers. At said hearing the parties appeared by their attorneys and were fully heard.

(9) On December 11th, 1930, said Probate Court made the following order and decree, namely: "that the property forming this trust is not subject to the Connecticut inheritance tax."

(10) On December 2nd, 1930, William H. Blodgett, Tax Commissioner, took an appeal from said order and decree of said Probate Court to the Superior Court for the County of Fairfield, to be held on the first Tuesday of February, 1931, and filed a bond pursuant to law to prosecute said appeal to effect.

(11) On February 4th, 1931, said William H. Blodgett, Tax Commissioner, appellant herein, filed in said Superior Court for Fairfield County a statement of reasons of appeal, as on file appears.

The parties hereto respectfully represent to the Court that the questions of law involved are as follows:

(See amended questions of law.)

William H. Blodgett, Tax Commissioner, by Warren [fol. 5] B. Burrows, Attorney General; Farwell Knapp, Inheritance Tax Attorney, His Attorneys. Guaranty Trust Company of New York, Executor, by Hill, Lockwood & Redfield, Its Attorneys.

[File endorsement omitted.]

Exhibit "A" to Stipulation

This indenture made the 28th day of December, nineteen hundred and twenty-six, between Harriet Denmead Sewell, of Greenwich, State of Connecticut, party of the first part, and the Guaranty Trust Company of New York, a corporation organized under the banking laws of the State of New York, having its principal office in the Borough of Manhattan, City and State of New York, hereinafter called the Trustee, party of the second part;

Whereas, the party of the first part desires to create a trust of the property, and for the purposes hereinafter mentioned, now therefore, this indenture.

Witnesseth, that in consideration of the premises, the mutual covenants herein contained, and of other good and valuable considerations, and of the sum of one dollar ($1.00) to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part has granted, conveyed, assigned, set over and delivered, and by these presents does grant, convey, assign, set over and deliver unto the party of the second part, its successors and assigns, the securities set forth in Schedule A hereto annexed which is made part hereof, to have and to hold the same unto the party of the second part, its successors and assigns, in trust, nevertheless, for the following uses and purposes, and subject to the terms and conditions hereinafter set forth.

1. To invest and reinvest the same; to collect and receive the issues, interest, income and profits therefrom, and after deducting the necessary and reasonable expenses of administering said trust, to pay the net income as and when received to the party of the first part during the term of her natural life.

Upon her death, to continue to invest and reinvest the principal of said trust, and to apply the net income to the use of William B. Sewell, husband of the party of the first part, during the term of his natural life.

Upon, or in case of, the death of the said William B. Sewell, to pay and transfer the principal of said trust to

Madeleine Sewell Barjou, daughter of the party of the first part, to her own use absolutely.

In providing for the above mentioned transfer to her said daughter, the party of the first part desires to express her wish that the said Madeleine Sewall Barjou may see [fol. 6] her way clear to create a trust of said fund with some responsible corporate trustee, to the end that the income therefrom may be secured to her during her life.

In the event that the said Madeleine Sewell Barjou shall predecease both the party of the first part and the said William B. Sewell, then upon the death of the survivor, the entire principal of said trust fund shall be paid and transferred, in equal shares, to the issue of the said Madeleine Sewell Barjou, if any, per stirpes; if none, then to Anna L. McEvoy, or to her issue, per stirpes.

2. Except as otherwise herein provided, the Trustee is hereby given full power of sale of any security or securities which from time to time it may be holding as a part of the principal of said trust fund.

3. The Trustee may in its sound discretion cause the securities which may from time to time comprise the trust fund, or any part thereof, to be registered in its name as Trustee hereunder, or in its own name, or the name of its nominee, or may take and keep the same unregistered, or retain them, or any part thereof, in such condition that they will pass by delivery.

4. During the lifetime of the said William B. Sewell, no purchase or sale of any securities for said trust fund shall be made by the Trustee except by direction of said William B. Sewell. At all times thereafter the same shall be subject to the approval of the party of the first part. No statutory limitation or restriction shall apply to any investments which may be made by the Trustee, nor shall the Trustee be liable for any loss or depreciation incurred by reason of any investments made by it, except such as shall have occurred through its own wilful default or neglect.

5. In case of securities taken or purchased for the trust fund at a premium, the Trustee shall not be required to set aside any part of the income therefrom as a sinking fund to retire or absorb such premium.

6. All stock dividends which may at any time or from time to time be received by the Trustee hereunder shall be considered by it to be wholly principal as far as it may lawfully do so and shall be invested and reinvested in the same manner as hereinabove directed with respect to the original capital of the trust hereby created; provided, however, that all dividends by way of distribution of capital or otherwise made upon any shares of the preferred capital stock of Handy & Harmon, Inc., which may from time to time be held by the Trustee hereunder, shall be deemed to be wholly income and be distributed as such.

7. The Trustee is further authorized and empowered to pay any and all taxes which properly may become payable from time to time under the laws of the United States, or of any state, county or municipality upon said trust property, or for any transfer thereof or transaction affecting the same, and to affix and cancel tax stamps in accordance with the provisions of said laws.

8. The party of the first part hereby reserves the privilege of increasing the principal of the trust fund from time to time by adding thereto property and securities which [fol. 7] the Trustee shall receive, hold, manage, invest and reinvest in the same manner as above specified in respect of the property forming the original trust fund.

9. It shall be the duty of the Trustee at the end of each calendar year to render to the beneficiaries an account of the income received for his or her benefit, together with a statement of the source thereof, and further, shall notify each such beneficiary of any default occurring in the payment of the usual interest or dividend upon any security forming the principal of said respective trusts, as and when such default occurs.

10. The Trustee is also authorized in the discharge of its duty to employ counsel and agents, and to determine and pay to them reasonable compensation, and it shall be entitled to reimbursement for the same, and for such other and further expenses and charges as it may deem necessary and proper to incur.

11. The Trustee is authorized and empowered to vote in person or by proxy upon all stocks or other securities of

any corporation held by it from time to time; to vote to dissolve any such corporation, or to increase, decrease or change the character of its capital stock; to join with other stockholders of any company in which it may hold stock or other securities in any agreement having for its object the pooling of such stock or other securities for their mutual benefit in the sale or other disposition thereof; to exchange the securities of any corporation for other securities issued by the same or by any other corporation, at such times and upon such terms and conditions as it shall deem proper; to consent to the recapitalization, reorganization, consolidation or merger of any corporation, and to the sale or lease of its property, or any portion thereof, to any person or corporation, or to the lease by any person or corporation of his or its property, or any portion thereof, to such corporation, and upon such recapitalization, reorganization, consolidation, merger, sale, or lease, to exchange the securities held by it for the securities issued in connection therewith; to pay all assessments, subscriptions and other sums of money as it may deem expedient for the protection of its interests as holder of any stocks, bonds, or other securities of any corporation, and to exercise any option contained in any stocks, bonds or other securities, for the conversion of the same into other securities or take advantage of any rights to subscribe for additional stocks, bonds or other securities, and to make any and all necessary payments therefor, and generally to exercise in respect of all stocks, bonds or other investments held by it all such rights, powers and privileges as are or may be lawfully exercised by any person owning similar property in his own right; provided, however, that the Trustee shall not be required to make any of the payments herein referred to except from the principal of the trust fund, or from funds which may be received for that purpose by the party of the first part. The provisions of this paragraph are subject to the direction and control of the said William B. Sewell during his life; and thereafter subject to the approval of the party of the first part.

12. The Trustee shall be entitled to receive as compensation for its services in the administration of this trust the [fol. 8] commissions allowed to testamentary trustees by the Statutes of the State of New York upon income re-

ceived and paid out, and upon principal the following rates: 2% upon the first $250,000; 1½% upon the next $250,000, and 1% on the balance, payable upon the final termination of the trusts hereby created.

13. The Trustee by joining in the execution of this instrument signifies its acceptance of the trust.

14. It is mutually agreed that these presents shall extend to and be obligatory upon the executors, administrators, legal representatives and successors of the parties hereto.

15. This instrument is made in duplicate, each of which is an original, but both together shall be deemed to be one and the same.

In witness whereof the party of the first part has hereunto set her hand and seal and the party of the second part has caused these presents to be signed by its Vice-President and its corporate seal to be hereunto affixed the day and year first above written.

Harriet Denmead Sewell. In presence of: R. L. Redfield. Guaranty Trust Company of New York, by R. E. Cocks. Attest: C. H. Schmidt, Asst. Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this 28th day of December, nineteen hundred and twenty-six, before me personally came Harriet Denmead Sewell, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

W. C. Bloom, Notary Public, Queens County, etc.

STATE OF NEW YORK,
County of New York, ss:

On this 28th day of December, nineteen hundred and twenty-six, before me came Rowland E. Cocks, to me known, who being by me duly sworn, deposes and says that he resides in Bronxville, N. Y.; that he is a Vice-President

of the Guaranty Trust Company of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

W. C. Bloom, Notary Public, Queens County, etc.

[fol. 9] SCHEDULE "A" TO TRUST DEED

List of Securities Referred to in the Foregoing Deed of Trust

$5,000	Bedford Belt Ry. Co. 1st 5s, 1938.
5,000	Brooklyn Edison Co. Inc. Gen. 5s, Series A, 1949.
5,000	Chic. Gas Light & Coke Co. 1st 5s, 1937.
10,000	Chic. Union Station Co. 1st 5s, Series B, 1963.
5,000	Columbus Gas Co. 1st 5s, 1932.
5,000	Duquesne Light Co. 1st Col. Trust 5½s, Series B, 1949.
5,000	Florida Cent. Peninsula R. R. Co. 1st Cons. 5s, 1943.
5,000	Georgia & Alabama Ry. Co. 1st Cons. 5s, 1945.
5,000	Grand Trunk Western Ry. Co. 1st 4s, 1950.
5,000	Gulf Terminal Co. 1st 4s, 1957.
5,000	Hocking Valley Ry. Co. 1st Cons. 4½s, 1999.
10,000	Humble Oil & Refg. Co. Deb. 5½s, 1932.
5,000	Illinois Central R. R. Co. Sec. 5½s, 1934.
5,000	Intl. Paper Co. 1st Ref. S/F 5s, Series B, 1947.
10,000	Kansas City Southern Ry. Co. Ref. Improv. 5s, 1950.
5,000	Kentucky & Indiana Term. R. R. Co. 1st 4½s, 1961.
5,000	Lake Erie & Western R. R. Co. 1st 5s, 1937.
5,000	Memphis Power & Light Co. 1st Ref. 5s, Series A, 1948.
5,000	Montana Power Co. 1st Ref. S/F 5, Series A, 1943.
5,000	New Orleans & Northwestern R. R. Co. Ref. & Improv. 4½s, Series A, 1952.
5,000	Niagara Falls Power Co. 1st 5s, 1932.
10,000	Northern Pacific Ry. Co. Ref. & Improv. 6s, Series B, 2047.

5,000 Oregon, Wash. Ry. & Nav. Co. 1st Ref. 4s, Series A, 1961.
5,000 Pere Marquette Ry. Co. 1st 5s, Series A, 1956.
5,000 Phila. & Reading Coal & Iron Co. Ref. S/F 5s, 1973.
5,000 Pressed Steel Car Co. Conv. 5s, 1933.
5,000 Prov. of New Brunswick Deb. 6s, Series L, Transfer, 1931.
5,000 Republic Iron & Steel Co. Ref. & Gen. Mtg. S/F 5½s, Series A, 1953.
5,000 San Antonio & Aransas Pass Ry. Co. 1st 4s, 1943.
5,000 Tennessee Coal & Iron & R. R. Co. Gen. 5s, 1951.
5,000 Utica Gas & Elec. Co. Ref. & Ext. 5s, 1957.
5,000 Western Union Tel. Co. Col. Trust 5s, 1938.
5,000 Youngstown Steel & Tube Co. Deb. 6s, 1943.
5,000 Consolidated Gas Co. of N. Y. Deb. 5½s, 1945.
10,000 Kingdom of Norway Ext. S/F 6s, 1944.
5,000 Laclede Gas Light Co. 1st Coll. Ref. 5½s, Series C, 1953.
5,000 Lehigh Valley Harbor Terminal Ry. Co. 1st 5s, 1954.
5,000 Liggett & Myers Tobacco Co. 5s, 1951.
5,000 Pittsburgh Youngstown & Ashtabula Ry. Co. 1st Gen. 5s, 1962.
10,000 St. Paul, Kansas City Short Line R. R. Co. 1st 4½s, 1941.
5,000 Southern Indiana Ry. Co. 1st 4s, 1951.
5,000 State of Queensland, Australia, Ext. S/F 6s, 1947.
10,000 Union Oil of Calif. 6s, Series A, 1942.

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5,000 Wash. & Vandemer R. R. Co. 1st 4½s, 1947.
5,000 Bell Telephone Co. of Canada, 1st 5s, Series A, 1955.
10,000 Commonwealth Edison Co. 1st 5s, 1943.
5,000 Florida East Coast Ry. Co. 1st Ref. 5s, Series A, 1974.
10,000 Gov. of the Argentine Nation Ext. S/F 6s, Series A, 1957.
5,000 Indiana & Michigan Elect. Co. 1st Ref. 5s, 1955.
5,000 Kingdom of Belgium Ext. Loan 6½s, 1949.
5,000 Oklahoma Gas & Elec. Co. 1st 5s, Series A, 1950.

5,000	Penn. Power & Light Co. 1st Ref. 5s, Series D, 1953.
5,000	Santa Fe, Prescott & Phœnix Ry. Co. 1st 5s, 1942.
5,000	Toledo Edison Co. 1st 7s, 1941.
5,000	Wash. Central Ry. Co. 1st 4s, 1948.
5,000	Central of Georgia Ry. Co. Ref. & Gen. 5½s, Series B, 1959.
10,000	German Ext. Loan of 1924, 7s, 1949.
5,000	Indianapolis Gas Co. of Ind. 1st Cons. 5s, 1952.
5,000	Kansas City Southern Ry. Co. 1st 3s, 1950.
10,000	N. Y. Central R. R. Co. Ref. & Imp. 5s, Series C, 2013.
10,000	Nord Ry. Co. 6½s, Ext. S/F 1950.
5,000	Northern States Power Co. 1st Ref. 5s, Series A, 1941.
5,000	Pittsburgh, Shenango & Lake Erie R. R. Co. 1st 5s of 1890, 1940.
5,000	Public Service Gas & Elec. Co. 1st Ref. 5½s, 1959.
5,000	St. Louis, Iron Mt. & Southern Ry. Co. Cons. & Land Grant 5s, 1931.
5,000	Sheffield Farms Co. Inc. 1st Ref. 6½s, 1942.
10,000	Swiss Confederation Ext. Loan 5½s, 1946.
5,000	Union Oil of Calif. S/F 5s, Series C, 1935.
5,000	West Penn. Power Co. 1st 5½s, Series F, 1953.
5,000	Wisconsin Central Ry. Co. Int. Guar. on 3 M P. B. 1st Ref. 4s, 1959.
5,000	Baltimore & Ohio R. R. Co. (Pitts. Lake Erie & W. Va. System) Ref. 4s, 1941.
5,000	Brooklyn Union Gas. Co. 1st Cons. 5s, 1945.
5,000	Central R. R. & Banking Co. of Ga. Coll. Trust 5s, 1937.
5,000	Ches. & Potomac Tel. Co. of Va. 1st S/F 5s, Series A, 1943.
10,000	Chic. & Erie R. R. Co. 1st 5s. 1982.
5,000	Cincinnati, Lebanon & Northern 1st Cons. 4s, 1942.
5,000	City of Rotterdam (Kingdom of Neth.) Ext. S/F 6s, 1964.
5,000	Corn Products Refining Co. 1st S/F 5s, 1934.
5,000	Federal Sugar Refining Co. S/F 6s, 1933.
5,000	Galveston, Harrisburg & San Antonio Ry. of Texas (Mex. & Pac. Ext.) 1st 5s, 1931.
5,000	Hudson County Gas Co. 1st 5s, 1949.
5,000	Indiana Steel Co. 1st 5s, 1952.

5,000 N. Y., Greenwood Lake Ry. Co. P/L 5s, 1946.
5,000 N. Y., Lake Erie & Western Coal & R. R. Co. 1st 5½s, 1942.
5,000 N. Y. State Realty & Terminal Co. (385 Madison Ave.) 5s, Series I, 1932.
5,000 St. Louis & Southwestern Ry. Co. 1st 4s, 1989.
5,000 Southern Calif. Gas Co. 1st 6s, 1950.
5,000 Standard Milling Co. 1st 5s, 1930.
5,000 Central District Tel. Co. 1st S/F 5s, 1943.

[fol. 11]

5,000 Chic. Terre Haute & Southeastern Ry. Co. 1st Ref. 5s, 1960.
10,000 Illinois Bell Tel. Co. 1st Ref. 5s, Series A, 1956.
5,000 Illinois Central R. R. Co. Jt. 1st Ref. 5s, Series A, 1963.
5,000 Manitoba Southwestern Colonization Ry. Co. 1st 5s, 1934.
5,000 Pacific Gas & Elec. Co. 1st Ref. 5½s, Series C, 1952.
5,000 Pittsburgh, Cincinnati & St. Louis Gen. 5s, Series A, 1970.
5,000 South Porto Rico Sugar Co. 1st Coll. S/F 7s, 1941.
5,000 Southern Pacific Co. Conv. 5s, 1934.
5,000 Texas Power & Light Co. 1st 5s, 1937.
5,000 Toronto, Hamilton & Buffalo Ry. Co. 1st 4s, 1946.
100 shs. Carolina, Clinchfield & Ohio Ry. Co. common stock.
50 shs. Electric Bond & Share Co. 6% Preferred stock.
50 shs. Guaranty Trust Co. of N. Y. common stock.

EXHIBIT "B" TO STIPULATION

The following is a list of the securities constituting the principal of the trust created on December 28, 1926 by Harriet D. Sewell, with the values of the same as of the date of the decedent's death, May 20th, 1930:

$5,000.	Bedford Belt Railway Co. 1st 5's due 7/1/38 (Chronicle) @ 97	$4,850.00
5,000.	Chicago Gas Light & Coke Co. 1st 5's due 7/1/37 (N. Y. Stock Exch.) @ 102⅛	5,106.25

10,000.	Chicago Union Station Co. 1st Ser. B. 5's due 7/1/63 (N. Y. Stock Exch.) @ 104½	10,450.00
5,000.	Columbus Gas Co. 1st 5's, due 7/1/32 (N. Y. Stock Exch.) @ 97	4,850.00
5,000.	Florida Central & Peninsular R. R. Co. 1st Cons. 5's due 1/1/43 (N. Y. Stock Exch.) @ 98⅝	4,931.25
5,000.	Georgia & Alabama Rwy. Co. 1st Cons. 5's due 10/1/45 (N. Y. Stock Exch.) @ 84	4,200.00
5,000.	The Grand Trunk Western Ry. Co. 1st 4's due 7/1/50 (Chronicle) @ 86½	4,325.00
5,000.	Gulf Terminal Co. 1st 4's due 1/1/57 (Chronicle) @ 83	4,150.00
5,000.	The Hocking Valley Rwy. Co. 1st Cons. 4½'s, due 7/1/99 (N. Y. Stock Exch.) @ 98¾	4,937.50
10,000.	Humble Oil Co. Deb. 5½'s, due 7/15/32 (N. Y. Stock Exch.) @ 101⅞	10,187.50
5,000.	International Paper Co. 1st & Ref. Ser. B 5's due 1/1/47 (N. Y. Stock Exch.) @ 91	4,550.00
10,000.	Kansas City Southern Rwy. Co. Ref. & Imp. 5's due 4/1/50 (N. Y. Stock Exch.) @ 100⅞	10,087.50
5,000.	Lake Erie & Western R. R. 1st 5's due 1/1/37 (N. Y. Stock Exch.) @ 101	5,050.00
5,000.	Memphis Power & Light Co. 1st & Ref. Ser. A 5's due 1/1/48 (Chronicle) @ 100½	5,025.00

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5,000.	New Orleans & Northeastern R. R. Ref. & Imp. Ser. A 4½'s due 1/1/52 (N. Y. Stock Exch.) @ 95	4,750.00
5,000.	Montana Power Co. 1st Ref. Ser. A 5's due 7/1/43 (N. Y. Stock Exch.) @ 102¼	5,112.50
5,000.	Niagara Falls Power Co. 1st 5's due 1/1/32 (N. Y. Stock Exch.) @ 101½	5,075.00
10,000.	Northern Pacific Rwy. Co. Ref. & Imp. Ser. B 6's due 7/1/2047 (N. Y. Stock Exch.) @ 113⅝	11,362.50

5,000.	Oregon, Washington Rwy. & Navigation Co. 1st & Ref. Ser. A 4's due 1/1/61 (N. Y. Stock Exch.) @ 91	4,550.00
5,000.	Pere Marquette Rwy. Co. 1st Ser. A 5's due 7/1/56 (N. Y. Stock Exch.) @ 104½	5,225.00
5,000.	Philadelphia & Reading Coal & Iron Co. Ref. 5's due 1/1/73 (N. Y. Stock Exch.) @ 87	4,350.00
5,000.	Pressed Steel Car Co. Conv. 5's due 1/1/33 (N. Y. Stock Ex.) @ 79¼	3,962.50
5,000.	Province of New Brunswick Ser. L. Deb. 6's due 7/1/31 (Guaranty Co.) @ 101¼	5,062.50
5,000.	Republic Iron & Steel Co. Ref. Ser. A, 5½'s, due 1/1/53 (N. Y. Stock Ex.) @ 103½	5,175.00
5,000.	San Antonio & Aransas Pass Rwy. Co. 1st 4's due 1/1/43 (N. Y. Stock Ex.) @ 93	4,650.00
5,000.	Tennessee Coal & Iron R. R. Co. 5's due 7/1/51 (N. Y. Stock Ex.) @ 102⅝	5,131.25
5,000.	Utica Gas & Electric Co. Ref. & Ext. 5's due 7/1/57 (N. Y. Stock Ex.) @ 105	5,250.00
5,000.	Western Union Telegraph Co. Collateral 5's due 1/1/38 (N. Y. Stock Ex.) @ 101⅜	5,068.75
5,000.	Consolidated Gas Co. of N. Y. 5½'s, due 2/1/45 (N. Y. Stock Ex.) @ 106	5,300.00
10,000.	Kingdom of Norway Ext. Loan 6's due 8/1/44 (N. Y. Stock Ex.) @ 102¾	10,275.00
5,000.	Laclede Gas Light Co. 1st Coll. Ref. Ser. C 5½'s due 2/1/53 (N. Y. Stock Ex.) @ 102½	5,125.00
5,000.	Lehigh Valley Harbor Terminal Rwy. Co. 1st 5's due 2/1/54 (N. Y. Stock Ex.) @ 105	5,250.00
5,000.	Pittsburgh, Youngstown & Ashtabula Rwy. Co. Genl. 5's due 2/1/62 (N. Y. Stock Ex.) @ 105⅝	5,181.25
5,000.	Liggett & Myers Tobacco Co. 5's due 8/1/51 (N. Y. Stock Ex.) @ 103⅞	5,193.75

10,000.	St. Paul, Kansas City Short Line R. R. 1st 4½'s, due 2/1/41 (N. Y. Stock Ex.) @ 97¾	9,775.00
5,000.	Southern Indiana Rwy. Co. 1st 4's due 2/1/51 (Chronicle) @ 84	4,200.00
5,000.	State of Queensland, Australia, Ext. 6's due 2/15/47 (N. Y. Stock Ex.) @ 100	5,000.00
10,000.	Union Oil Co. of Calif. Ser. A 6's due 5/1/42 (N. Y. Stock Ex.) @ 106	10,600.00

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5,000.	Washington & Vandemere R. R. Co. 1st 4½'s, due 2/1/47 (Chronicle) @ 94	4,700.00
5,000.	Bell Telephone of Canada 1st Ser. A 5's due 3/1/55 (N. Y. Curb Ex.) @ 102⅛	5,106.25
10,000.	Commonwealth Edison Co. 1st 5's due 6/1/43 (Chronicle) @ 104	10,400.00
10,000.	Govt. of the Argentine Nation Ext. 6's due 9/1/57 (N. Y. Stock Ex.) @ 99	9,900.00
5,000.	Indiana & Michigan Electric Co. 1st & Ref. 5's due 3/1/55 (Chronicle) @ 102	5,100.00
5,000.	Oklahoma Gas & Electric Co. 1st Ser. 5's due 3/1/50 (Unlisted Securities) @ 100	5,000.00
5,000.	Kingdom of Belgium Ext. 6½'s due 9/1/49 (N. Y. Stock Ex.) @ 107⅞	5,393.75
5,000.	Pennsylvania Power & Light Co. 1st & Ref. Ser. D 5's due 9/1/53 (N. Y. Curb Ex.) @ 101⅝	5,081.25
5,000.	Santa Fe, Prescott & Phœnix Rwy. Co. 1st 5's due 9/1/42 (N. Y. Stock Ex.) @ 100	5,000.00
5,000.	Washington Central Rwy. Co. 1st 4's due 3/1/48 (N. Y. Stock Ex.) @ 85½	4,275.00
5,000.	Central of Georgia Rwy. Co. Ref. & Genl. Ser. B 5½'s due 4/1/59 (N. Y. Stock Ex.) @ 105	5,250.00
10,000.	German External of 1924 7's due 10/15/49 (N. Y. Stock Ex.) @ 108⅜	10,837.50
5,000.	Indianapolis Gas Co. of Indiana 1st Cons. 5's due 4/1/52 (Chronicle) @ 100	5,000.00
5,000.	Kansas City Southern Rwy. Co. 1st 3's due 4/2/50 (N. Y. Stock Ex.) @ 76	3,800.00

10,000.	N. Y. Central R. R. Co. Ref. & Imp. Ser. C 5's due 10/1/2013 (N. Y. Stock Ex.) @ 107½	10,750.00
10,000.	Nord Rwy. Co. Ext. 6½'s due 10/1/50 (N. Y. Stock Ex.) @ 103⅞	10,387.50
5,000.	Northern States Power Co. 1st & Ref. Ser. A 5's due 4/1/41 (N. Y. Stock Ex.) @ 101⅝	5,081.25
5,000.	Pittsburgh, Shenango & Lake Erie R. R. Co. 1st 5's due 10/1/40 (N. Y. Stock Ex.) @ 101¼	5,062.50
5,000.	St. Louis, Iron Mountain & Southern Rwy. Co. Genl. Cons. Rwy. & Land Grant 5's due 4/1/31 (N. Y. Stock Ex.) @ 100½	5,025.00
10,000.	Swiss Confederation Ext. 5½'s due 4/1/46 (N. Y. Stock Ex.) @ 104¾	10,475.00
5,000.	Union Oil Co. of Calif. Ser. C 5's due 2/1/35 (N. Y. Stock Ex.) @ 99⅞	4,993.75
5,000.	West Penn Power Co. 1st Ser. F 5½'s due 10/1/53 (N. Y. Stock Ex.) @ 104⅝	5,231.25
5,000.	Wisconsin Central Rwy. Co. 1st & Ref. 4's due 4/1/59 (Chronicle) @ 56	2,800.00

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5,000.	Baltimore & Ohio R. R. Co. (Pittsburgh, Lake Erie & West Virginia System) Refunding 4's due 11/1/41 (N. Y. Stock Ex.) @ 93⅝	4,681.25
5,000.	Brooklyn Union Gas Co. 1st Cons. 5's due 5/1/45 (N. Y. Stock Ex.) @ 106⅛	5,306.25
5,000.	Central R. R. & Banking Co. of Georgia Coll. 5's due 5/1/37 (N. Y. Stock Ex.) @ 97¾	4,887.50
5,000.	Chesapeake & Potomac Telephone Co. of Virginia 1st Ser. A 5's due 5/1/43 (Chronicle) @ 102	5,100.00
10,000.	Chicago & Erie R. R. Co. 1st 5's due 5/1/82 (N. Y. Stock Ex.) @ 103⅝	10,362.50
5,000.	Cincinnati, Lebanon & Northern Rwy. Co. 1st Cons. 4's due 11/1/42 (N. Y. Stock Ex.) @ 90	4,500.00

5,000.	City of Rotterdam (Kingdom of Netherlands) Ext. 6's due 5/1/64 (N. Y. Stock Ex.) @ 101⅝	5,081.25
5,000.	Corn Products Refining Co. 1st 5's due 5/1/34 (N. Y. Stock Ex.) @ 102	5,100.00
5,000.	Galveston, Harrisburg & San Antonio Rwy. of Texas (Mexico & Pacific Extension) 1st 5's due 5/1/31 (N. Y. Stock Ex.) @ 100¼	5,012.50
5,000.	Hudson County Gas Co. 1st 5's due 11/1/49 (N. Y. Stock Ex.) @ 102¾	5,137.50
5,000.	N. Y. Greenwood Lake Rwy. Co. Prior Lien 5's due 5/1/46 (N. Y. Stock Ex.) @ 96½	4,825.00
5,000.	N. Y. State Realty & Terminal Co. (385 Madison Ave.) Ser. I 5's due 5/1/32 (Guaranty Co.) @ 99	4,950.00
5,000.	St. Louis & Southwestern Rwy. Co. 1st 4's due 11/1/89 (N. Y. Stock Ex.) @ 86⅝	4,331.25
5,000.	Southern California Gas Co. 1st 6's due 11/1/50 (Pynchon & Co.) @ 104	5,200.00
5,000.	Standard Milling Co. 1st 5's due 11/1/30 (N. Y. Stock Ex.) @ 100¼	5,012.50
5,000.	Central District Telephone Co. 1st 5's due 12/1/43 (N. Y. Stock Ex.) @ 103⅝	5,181.25
5,000.	Chicago, Terre Haute & Southeastern Rwy. Co. 1st Ref. 5's due 12/1/60 (N. Y. Stock Ex.) @ 90½	4,525.00
10,000.	Illinois Bell Telephone Co. 1st Ref. Ser. A 5's due 6/1/56 (N. Y. Stock Ex.) @ 105¼	10,525.00
5,000.	Illinois Central R. R. & Chicago, St. Louis I. New Orleans R. R. Co. Joint Refunding Ser. A 5's due 12/1/63 (N. Y. Stock Ex.) @ 105⅛	5,256.25
5,000.	Manitoba Southwestern Colonization Rwy. Co. 1st 5's due 6/1/34 (N. Y. Stock Ex.) @ 99¼	4,962.50
5,000.	Pacific Gas & Electric Co. 1st & Ref. Ser. C 5½ due 12/1/52 (Pynchon) @ 104¾	5,237.50

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5,000.	Pittsburgh, Cincinnati, Chicago & St. Louis Rwy. Co. Genl. Ser. A 5's due 6/1/70 (N. Y. Stock Ex.) @ 109	5,450.00
5,000.	Southern Pacific Co. Conv. 5's due 6/1/34 (N. Y. Stock Ex.) @ 102½	5,125.00
5,000	Texas Power & Light Co. 1st 5's due 6/1/37 (Pynchon) @ 100½	5,025.00
5,000.	Toronto Hamilton & Buffalo Rwy. Co. 1st 4's due 6/1/46 (N. Y. Stock Ex.) @ 89	4,450.00
5,000.	N. Y. Lake Erie & Western Coal & R. R. Co. 1st 5½'s due 5/1/42 (N. Y. Stock Ex.) @ 101	5,050.00
10,000.	Kresge Foundation Coll. 6's due 6/1/36 (N. Y. Stock Ex.) @ 103½	10,350.00
3,000.	Shawinigan Water & Power Co. 1st Coll. Ser. A 4½'s due 10/1/67 (Pynchon) @ 94½	2,835.00
5,000.	Bell Telephone of Canada 1st Ser. B 5's due 6/1/57 (N. Y. Curb Ex.) @ 102½	5,112.50
5,000.	Chicago & Northwestern Rwy. Co. Conv. Ser. A 4¾'s due 11/1/49 (N. Y. Stock Ex.) @ 101½	5,075.00
1,000.	Kentucky & Indiana Terminal R. R. 1st 4½'s due 1/1/61 (N. Y. Stock Ex.) @ 85½	4,275.00
100 shs.	Carolina Clinchfield & Ohio Rwy. Co. common $4. $100 p. v. (Virginia corp.) (N. Y. Stock Ex.) @ 86¼	8,625.00
50 "	Electric Bond & Share Co. 6% pfd. no par (N. Y. corp.) (N. Y. Curb Ex.) @ 108⅞	5,443.75
50 "	Bethlehem Steel Corp. Cum 7% Pfd. $100 p. v. (N. J. corp.) (N. Y. Stock Ex.) @ 131⅛	6,556.25
50 "	United Cigar Stores of America 6% Pfd. $100 p. v. (N. J. corp.) (N. Y. Stock Ex.) @ 49½	2,475.00
50 "	Kansas City Power & Light Co. 1st Pfd. Ser. B 6% no par (Mo. corp.) (N. Y. Stock Ex.) @ 112⅝	5,631.25

25 shs.	Pacific Lighting Corp. 6% pfd. no par (Calif. corp.) (Los Angeles Stock Ex.) @ 102¼	2,556.25
85 "	Guaranty Trust Co. of N. Y. c/s $100 p. v. (N. Y. corp.) (N. Y. Times) @ 768	65,280.00
	Balance on deposit with Guaranty Trust Company, New York	68.21
		$632,533.21

IN SUPERIOR COURT OF FAIRFIELD COUNTY

STIPULATION FOR RESERVATION TO THE SUPREME COURT OF ERRORS—Filed May 8, 1931

It is hereby stipulated by the parties to this cause, appearing herein by counsel, that the above entitled cause may be reserved for the advice of the Supreme Court of Errors upon the statement of facts set forth in the stipula-
[fol. 16] tion dated April 14th, 1931, and on file in said cause, and upon the questions of law set forth in said stipulation as filed. And further that the present determination of the above questions of law will be in the interest of simplicity, directness and economy in judicial action because the facts agreed upon as set forth in said stipulation are all the facts in the above entitled action and because the determination of the questions of law set forth in said stipulation will be a final determination of said cause and because said questions of law are of great public importance and of great practical importance to the parties thereto.

For the reasons above stated, the parties hereby request that the questions above set forth be reserved for the advice of the Supreme Court of Errors.

William H. Blodgett, Tax Commissioner, by Warren B. Burrows, Attorney General; Farwell Knapp, Inheritance Tax Attorney, His Attorneys. Guaranty Trust Company of New York, Executor, by Hill, Lockwood & Redfield, Its Attorneys.

[File endorsement omitted.]

IN SUPERIOR COURT OF FAIRFIELD COUNTY

AMENDMENT TO STIPULATION OF QUESTIONS OF LAW—Filed June 19, 1931

The questions of law set out in the stipulation filed in this court on or about April 14th, 1931, are hereby amended to read as follows:

(1) Did the property which was the subject of transfer by the indenture dated December 28th, 1926, Exhibit A. "pass by deed, grant or gift * * * intended to take effect in possession or enjoyment at the death of the grantor or donor", within the meaning of the Connecticut succession tax statute, in force at the date of the execution of said deed, or within the meaning of any subsequent amendment or revision of said succession tax statute?

(2) If said transfer is held to be taxable within the meaning of the applicable succession tax statute, would the imposition of such tax offend against Amendment XIV of the Constitution of the United States or against any other provision of said Constitution?

(3) If said transfer is held taxable, as of what date should the property be valued for the purpose of computing such tax?

(4) If said transfer is held taxable, is the tax to be computed upon the whole value of the property transferred, or upon the then present value of the reserved life estate or, upon the then present value of the remainders?

[fol. 17] (5) Did the Probate Court for the District of Greenwich err in its decree of December 11th, 1930, finding that said transfer was not subject to the Connecticut succession tax?

William H. Blodgett, Tax Commissioner, Appellant, by Warren B. Burrows, Attorney General; Farwell Knapp, Assistant Tax Commissioner, His Attorneys. Guaranty Trust Company of New York, Executor, Hill, Lockwood & Redfield, Its Attorneys.

[File endorsement omitted.]

IN SUPERIOR COURT OF FAIRFIELD COUNTY

RESERVATION—Filed June 23, 1931

At the request of and by the consent of the parties to this action appearing by counsel, the Court reserved the questions of law which said parties have raised, as appears in the pleadings and by the stipulation on file for the advice of the Supreme Court of Errors within and for the Third Judicial District, as to what judgment, decree or decision should be made or rendered thereon by this Court.

Dickenson, Judge.

[File endorsement omitted.]

SUPREME COURT OF ERRORS, THIRD JUDICIAL DISTRICT, FAIRFIELD COUNTY

Clerk's Office

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court of Errors.

Michael J. Flanagan, Clerk.

[fol. 18] IN SUPREME COURT OF ERRORS OF CONNECTICUT

#34860

WILLIAM H. BLODGETT, Tax Commissioner,

vs.

APPEAL FROM PROBATE (Est. of Harriet D. Sewell)

JUDGMENT—Jan. 27, 1932

"We answer the questions propounded as follows:

(1) to the first question, that the property which was subject of transfer passed by deed, grant or gift intended to take effect in possession or enjoyment at the death of the grantor or donor within the meaning of the Connecti-

cut Succession Tax statute in force at the execution of the instrument of transfer; (2) to the second question, that the imposition of such tax thereon transgresses no provision of the United States Constitution; (3) to the third question, that the property should be valued as of the date of the death of the decedent; and (4) to the fourth question, that the tax should be computed on the valuation made as stated in the answer last preceding.

(Opinion by Hinman, J.)"

[fol. 19] In Supreme Court of Errors of Connecticut, October Term, 1931

William H. Blodgett, Tax Commissioner. Appeal from Probate (Estate Harriet D. Sewell)

William D. Blodgett, Tax Commissioner,

vs.

Winchester Bennett et al., Executors

Hamilton Gibson, Administrator C. T. A.,

vs.

William H. Blodgett, Tax Commissioner

William H. Blodgett, Tax Commissioner,

vs.

Middletown Trust Company, Trustee (Estate Wilbur F. Starr)

Maltbie, C. J.; Haines, Hinman, Banks and Avery, Js.

Appeals involving the application of the Connecticut Succession Tax statute to certain transfers of property, three taken by the State Tax Commissioner as follows; from a decree of the Court of Probate for the district of Greenwich to the Superior Court in Fairfield County and reserved by that court, Dickenson, J., for the advice of this court; from a decree of the Court of Probate for the district of New Haven to the Superior Court in New Haven

County and reserved by that court, Inglis, J., for the advice of this court; and from a decree of the Court of Probate for the district of East Hampton to the Superior Court in Middlesex County and reserved by that court, John Richards Booth, J., for the advice of this court; also one taken by the administrator c. t. a. from a decree of the Court of Probate for the district of Washington, taken to the Superior Court [fol. 20] in Litchfield County and reserved by that court, Inglis, J., for the advice of this court.

Farwell Knapp, Inheritance Tax Attorney, with whom, on the brief, was Warren B. Burrows, Attorney General, for the Tax Commissioner.

Charles M. Lyman, with whom was Clarence W. Bronson, for Hamilton Gibson, Administrator c. t. a.

James E. Wheeler, for Winchester Bennett et al., executors.

Alvan Waldo Hyde, for Middletown Trust Company, trustee.

Alvan Waldo Hyde, with whom, on the brief, was R. L. Redfield, of New York City, for Guaranty Trust Company of New York, executor.

OPINION

HINMAN:

Harriet D. Sewell died May 20th, 1930, domiciled in Greenwich. On December 28th, 1926, she executed an irrevocable deed of trust to a New York Trust Company of certain securities therein described in which deed it was provided that the trustee collect the income and pay it to Mrs. Sewell during her life; upon her death the income was to be paid to her husband during his life, and upon his death the trustee was directed to pay and transfer the principal of the trust absolutely to their daughter, if she survive, but if not, then to the issue of the daughter, with a gift over in default of such issue.

Thomas G. Bennett died August 19th, 1930, domiciled in New Haven. On June 18th, 1921, he executed and delivered a warranty deed conveying to his three children four pieces of land with the dwelling house and other buildings thereon located in New Haven, reserving to himself "the use, improvements, occupation, enjoyment, and income from said

premises, for and during the full term of (his) natural life." The real estate so conveyed had long been and thereafter remained the grantor's home and he continued [fol. 21] to live there until his death.

Emma L. B. Gibson died April 9th, 1930, always having been domiciled in Washintgon, Connecticut. On May 4th, 1918, she gave a deed of certain real estate in Washington to a trustee reserving to herself the net income thereof for her life with remainder at her death to her son in fee or, if he should not survive, to her grandchildren in fee. No question is made as to the taxability of this transfer. On April 5th, 1918, Mrs. Gibson executed in New York an irrevocable trust deed covering certain intangible personal property consisting of stocks, bonds, and a check drawn by her to the order of the trustee. By the terms of the deed, the net income was required to be paid to the settlor during her life and at her death the principal to her son or, in case he did not survive, to the settlor's grandchildren. The trustee was at all times domiciled in New York, and the certificates of stock and the bonds were located in that State.

Wilbur F. Starr died July 23d, 1929, domiciled in East Hampton. On May 31st, 1928, he and his wife (who survived him) transferred by one trust deed certain real estate in East Hampton and certain securities, each contributing equal shares, to a trustee. It was provided that the income be paid to or for the benefit of either of the donors during their joint lives, upon the death of one to the survivor for his or her life, the donors to have the use and occupancy of any real estate forming a part of the trust, and provision was made for the distribution of the fund upon the death of both to certain other persons and corporations. The tax commissioner claimed that the one-half of the fund contributed by the decedent was taxable.

The four cases involve, and the reservations present, the same general questions and were argued together in this [fol. 22] court.

The first question reserved in each case is: Did the property which was the subject of transfer "pass by deed, grant, or gift * * * intended to take effect in possession or enjoyment at the death of the grantor or donor"

within the meaning of the Connecticut succession tax statute, in force at the date of the deed, or within the meaning of any subsequent amendment or revision of said succession tax statute?

The common and perhaps not unnatural aversion of property owners to the burden of taxation appear- to have applied with special force to the diminution of the estates left by them at death through the imposition of estate, inheritance, or succession taxes. The early statutes taxing property passing by will or inheritance were followed by resort to various means for avoiding subjection to the tax. Among the devices most simple and commonly resorted to were gifts in contemplation of death, and transfers, in trust or otherwise, whereby the transferor reserved to himself the life use or income for life. These artifices were met by provisions in the taxing statutes calculated to close such avenues of tax avoidance. In consequence, the inheritance tax statutes of most of the States imposing taxes of that character include among the taxable transfers those made in contemplation of death and those intended to take effect in possession or enjoyment at or after the transferor's death. The Federal estate tax, on the transfer of a decedent's net estate, includes in the gross estate property to the extent of any interest therein of which the decedent has, during his lifetime, made a transfer or created a trust intended to take effect in possession or enjoyment at or after the death of the transferor or settlor.

The original Connecticut Act, Chapter 180, Public Acts [fol. 23] 1889, Sec. 1, included provisions for a tax on "property within the jurisdiction of this State, and any interest therein, * * * which shall pass * * * by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, in trust or otherwise". In 1897 (Public Acts, Chap. 201) this provisions does not appear, but it was restored, in substance, by Sec. 3 of Chapter 332, Public Acts of 1915, and has since continued unchanged in any respect materially affecting the present inquiry. General Statutes (1918) Secs. 1261-1271; Public Acts 1929, Chap. 299, Secs. 1 and 2; General Statutes (1930) Chap. 77, Secs. 1360, 1361.

These provisions of State and Federal statutes have occasioned an immense amount of litigation, although Con-

necticut has been conspicuously free therefrom. The most cursory review of the cases on this subject is impracticable here. The general subject is exhaustively covered in an article by Professor Rottschaefer of the University of Minnesota, in the Minnesota Law Review, April and May, 1930. See also Gleason and Otis, "Inheritance Taxation" (4th Ed.) p. 380 et seq. The more recent cases are collected in A. L. R. annotations, Vol. 49, p. 864 et seq. and Vol. 67, p. 1247 et seq. It is sufficient for present purposes to state that for a long period the power of the states constitutionally to enact such provisions, at least of prospective application, has not been regarded as open to question. None of the transfers involved in the cases now under consideration involve retrospective operation of the law, questions of construction as to whether the gift took effect, in possession or enjoyment, in the ultimate beneficiaries or in persons other than the transferor, before his death, or other complications which have furnished occasion for a large part of the litigation. Transfers such as here involved, except in the Bennett case, that is, to trustees to pay the income to the [fol. 24] transferor during life with directions that upon his death the corpus shall be paid to designated beneficiaries, though the trust be revocable, have been held by practically all courts, Federal and State, to fall within the meaning of a transfer intended to take effect in possession or enjoyment at or after the death of the transferor, and therefore subject to tax under statutes covering transfers of the class last mentioned. 49 A. L. R. p. 878, 67 A. L. R. p. 1250.

This court has not had occasion to pass directly upon the question, freed from the element of retrospective operation, but our full concurrence with the general view just stated is clearly indicated in Blodgett v. Union & New Haven Trust Co., 97 Conn. 405, 410, 116 Atl. 908. We there pointed out that the "qualifying and enlarging phrase" "in possession or enjoyment" included in our original succession tax Act (1889), dropped from the law in 1897, and reinserted in 1915 "mark the difference between a tax on the privilege of succeeding to the property of a decedent, and a tax on the privilege of succeeding to the possession and enjoyment of property which the decedent has conveyed away during his lifetime, reserving only a right to the income during his own life."

The raising of the question we are now considering appears to be due to the construction placed, by the representatives of the several estates involved, upon certain recent decision of the Supreme Court of the United States, as evincing a departure in effect from the decisions above referred to and lending encouragement to a renewed attack upon the provision under consideration and its applicability to the facts of cases such as those now before us. In Reinecke v. Northern Trust Co. (1929) 278 U. S. 339, 49 Sup. Ct. 123, there were involved five trusts in which the [fol. 25] settlor did not reserve any life use to himself, but the income was made payable to another and each trust was to terminate five years after the settlor's death or on the death of the respective life tenants, whichever should first occur, with remainders over to others. The settlor retained no interest either as to principal or income, only reserving a right to revoke each trust with the consent of the life tenant. It was held that since the power to revoke was dependent on the consent of the one entitled to the beneficial and consequently adverse, interest, the trusts had passed as completely from any control by the settlor which might benefit him as if the gifts had been absolute.

May v. Heiner (1930) 281 U. S. 238, 50 Sup. Ct. 286, concerned an irrevocable trust providing that the income be paid to settlor's husband during his life; at his death, if settlor survived him, the income to be paid to her during her lifetime; and on her death, or on her husband's death if he survived her, the trust to cease and the principal be paid to the settlor's children. The record fails clearly to disclose whether Mrs. May, the settlor, survived her husband, but this is stated by the opinion to be "not of special importance." It was held that "at the death of Mrs. May no interest in the property held under the trust deed passed from her to the living; title thereto had been definitely fixed by the trust deed. The interest therein which she possessed immediately prior to her death was obliterated by that event." The conclusion that the property embraced in the trust was not subject to the Federal estate tax appears to be based on the Reinecke case, from which the opinion quotes: "In the light of the general purpose of the statute and the language of Sec. 401 explicitly imposing the tax on net estates of decedents, we think it at least doubtful

[fol. 26] whether the trusts or interests in a trust intended to be reached by the phrase in Sec. 402 (c), 'to take effect in possession or enjoyment at or after his death', include any others than those passing from the possession, enjoyment or control of the donor at his death and so taxable as transfers at death under Sec. 401. That doubt must be resolved in favor of the taxpayer. * * *''

It is stated in Milliken v. United States (1931) 285 U. S. 15, 19, 51 Sup. Ct. 324, 326, that in the Reinecke case and May v. Heiner "the only relevant question was one of construction whether (the gifts) were of the class intended by Congress to be taxable under Sec. 402 (c) as transfers 'intended to take effect in possession or enjoyment at or after death.' "

Commissioner v. Northern Trust Co. and Morsman v. Commissioner, 283 U. S. 782, 783, 51 Sup. Ct. 342, 343, 75 L. Ed. 1412, involved irrevocable trusts wherein the settlor reserved a life use with remainders over. In McCormick v. Commissioners, 283 U. S. 784, 51 Sup. Ct. 343, 75 L. Ed. 1413, the trust instrument provided that the income should be accumulated and added to principal except that if in any year the settlor's net income should be less than a specified amount she could take from the trust income enough to make up the deficiency, and that the trustee should pay out of that income any amount to charities which she might designate. Remainders over after her death were created in the settlor's three children and there was a further provision that if the settlor survived her children (which did not occur) the entire trust property should revert to her. These three cases were argued on the same day, February 27th, 1931, and decided March 2d, 1931, by Per Curiam opinions stating in each case that "there being no question of the constitutional authority of the Congress to impose prospectively a tax with request to transfers or trusts of the sort here involved," "the question * * * [fol. 27] is that of construction of Sec. 402 (c) of the Revenue Act of 1921 * * * a provision similar to that of Sec. 402 (c) of the Act of 1918 * * * which has already been construed by this court." And it was held "upon authority of May v. Heiner" that the property transferred under the deed of trust was not subject to the Federal estate tax as a transfer intended to take effect in

possession or enjoyment at or after the decedent's death. Investigation of the records and briefs in these cases confirms the impression given by the opinions that, as in May v. Heiner, the only question considered and decided was one of construction. No question was made as to constitutional authority to impose, prospectively, a tax upon such transfers or trusts.

It is interesting and significant that on the day following that on which these three cases were decided, Congress adopted an amendment to Sec. 402, (c) expressly including within transfers made in contemplation of or intended to take effect in possession or enjoyment at or after death, "a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property, or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom." It is obvious from the quotation from the opinion in the Reinecke case which we have given above, that the decision, upon which the succeeding cases relied, was motivated by the nature of the Federal estate tax, which is upon the transfer of, rather than the succession to, property of the decedent. Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747; Y. M. C. A. of Columbus v. Davis, (1925) 264 U. S. 47, 44 Sup. Ct. 291; Edwards v. Slocum (1924) 264 U. S. 61, 62, 44 Sup. Ct. 293. "The tax is on the act of the testator, not on the receipt of property by the legatees". Ithaca Trust Co. v. United States (1929) 279 U. S. 151, 155, 49 Sup. Ct. 291; Corbin v. [fol. 28] Townshend, 92 Conn. 501, 505, 103 Atl. 607; Gleason & Otis, Inheritance Taxation (4th Ed.) p. 2 et seq. On the other hand, with a few exceptions, the State Inheritance tax statutes levy a duty or excise upon the beneficiary for the privilege or right of succession to property. Silberman v. Blodgett, 105 Conn. 192, 205, 134 Atl. 778; Gleason & Otis, Inheritance Taxation (4th Ed.) p. 4. The Connecticut tax is of this nature. Blodgett v. New Britain Trust Co., 108 Conn. 715, 720, 145 Atl. 56; Bankers Trust Co. v. Blodgett, 96 Conn. 361, 365, 114 Atl. 104. The Federal cases above mentioned which are relied upon in support of the claim that the transfers here in question are not taxable, since they "deal with the construction of Federal statutes imposing estate taxes * * * are distinguishable because of the terms of those statutes, if not on other grounds."

Worcester County National Bank v. Commissioners of Corporations and Taxation, Mass. —, 175 N. E. 726, 728. We have been able to discover no relevant subsequent case which has given these decisions an effect adverse to the taxability of such gifts under State succession tax statutes. See In re Barber's Estate (April 13th, 1931) 304 Pa. St. 235, 155 Atl. 565; City Bank Farmers Trust Co. v. McCutcheon (April 24th, 1931) N. J. L. —, 151 Atl. 78, 154 Atl. 625; In re Best's Estate (April 30th, 1931) 249 N. Y. Supp. 784; Matter of Barstow (May 22nd, 1931) 256 N. Y. 647, — N. E. —. Therefore, we feel that we are not constrained to place a similar construction upon our own statute and are still at liberty to adhere to the view as to its meaning and scope which usually have been held as to State statutes of similar nature and terms which we indicated in Blodgett v. Union & New Haven Trust Co. supra; these lead to the conclusion that the property which was the subject of transfer was within the meaning of the statute, and taxable accordingly. "The transaction was within the description of the statute. The property passed from the decedent to the beneficiary 'by deed, grant or gift.' Though upon the creation of the trust an equitable remainder in the trust fund, after the life estate of the decedent in such fund, [fol. 29] vested in interest in the beneficiary, she was not entitled to 'possession or enjoyment' of the fund or any part of it until the death of the decedent. * * * Her present right to the future 'possession or enjoyment' of the trust fund, which was 'vested' in the sense of being assignable and transmissible by her during the life of the decedent * * * was not 'possession or enjoyment' within the meaning of the statute. The statute recognizes the familiar distinction between taking effect in possession or enjoyment and vesting in right, title or interest. * * * Apparently the legislature intended to reach for the purpose of taxation the shifting of the enjoyment of property—the 'economic benefits' thereof or 'economic interest' therein (compare Saltonstall v. Saltonstall, 276 U. S. 260, 271, 48 Sup. Ct. 255, 72 L. Ed. 565; Reinecke v. Northern Trust Co., 278 U. S. 339, 346, 49 Sup. Ct. 123, 73 L. Ed. 410, 66 A. L. R. 397)—from a former owner at his death, even though such shifting of enjoyment followed necessarily from a prior transfer of title inter vivos. As was said in State Street Trust Co. v. Treasurer & Receiver General,

209 Mass. 373, 379, 95 N. E. 851, 852, 'The policy of the law is, that the owner of property shall not defeat or evade the tax by any form of conveyance or transfer, where after death the income, profit or enjoyment enures to the benefit of those who are not exempted." Worcester County National Bank v. Commissioner of Corporations and Taxation, supra.

As to the conveyance in the Bennett case "though the grantee * * * becomes the owner upon delivery of the deed in such sense that his title may be subject to levy and seizure, and only time is wanting to make a title which includes the right to possession and enjoyment, the legislature may subject him who takes such a conveyance to a collateral inheritance tax. It is well settled that reservation of a life estate is such a postponement of possession [fol. 30] and enjoyment as that the tax attaches, under such a statute as we have. Reish v. Commonwealth, 106 Pa. St. 521." Brown v. Guilliford, 181 Iowa, 897, 898, 165 N. W. 182.

The next question, common to all of the cases, is, does the imposition of such a tax offend against Amendment XIV, or any other provision of the Constitution of the United States? A negative answer is so decisively indicated that, beyond what has already been said, extended discussion is unnecessary. The constitutionality of taxation of transfers at death was long since upheld (Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747) and has been consistently maintained. The power of a State to tax transfers to take effect in possession or enjoyment at or after death was recognized in Nickel v. Cole, 256 U. S. 222, 41 Sup. Ct. 467. The same considerations apply to transfers of this kind as to gifts in contemplation of death. Of the latter it has recently been said: "It is sufficient for present purposes that such gifts are motivated by the same considerations as lead to testamentary dispositions of property, and made as substituted for such dispositions without awaiting death, when transfers by will or inheritance become effective. Underlying the present (United States) statute is the policy of taxing such gifts equally with testamentary dispositions, for which they may be substituted, and the prevention of the evasion of estate taxes by gifts made before, but in contemplation of, death. It is thus an

enactment in aid of, and an integral part of, the legislative scheme of taxation of transfers at death. * * * "We hold, as this court has several times intimated, that the inclusion of this type of gifts in a single class with decedents' estates to ensure equality of taxation, and prevent evasion of estates taxes, is a permissible classification of an appropriate subject of taxation," citing numerous cases. Milliken v. United States (1931) 283 U. S. 15, 20, 23, — Sup. Ct. —.

[fol. 31] Analogous also, for present purposes, is the inclusion in the Federal system of death taxes, of estates by the entirety. "As was pointed out in Tyler v. United States (281 U. S. 497; 50 Sup. Ct. 356) pp. 503-505, such estates are appropriate subject of death taxes * * * they resemble gifts made in contemplation of death likewise taxed by the estate tax provisions of the 1916 and later revenue acts." (Citing Milliken v. United States, supra.) Phillips v. Dime Trust & Safe Deposit Co. (1931) 284 U. S. —, 52 Sup. Ct. 46. As hereinbefore noted, the decisions in May v. Heiner, and the Morsman, Northern Trust Co., and McCormick cases, supra, did not concern or affect the constitutional question.

It was stated in Blodgett v. Union & New Haven Trust Co. 97 Conn. 405, 410, 116 Atl. 908, that "nobody doubts the right of the State to tax the privilege of succeeding to the possession and enjoyment of property under what the United States Supreme Court has called 'artificial and technical estates with limitations over.'" Citing Keeney v. New York, 222 U. S. 525, 32 Sup. Ct. 531. We conclude that there is no constitutional obstacle to the tax.

The further contention is advanced on behalf of the Gibson estate that although such transfers, in general, be held to be taxable, the personalty trust in that case is not so subject to taxation by Connecticut, because Mrs. Gibson, although domiciled in Connecticut, while temporarily in New York executed there the contract placing in trust with a New York trustee the intangible personal property—stocks, bonds, and a check on a New York bank—the physical evidences of which were also in the latter State. As to the basic principle involved, the situation appears to be indistinguishable from that applicable in cases, such as

Silberman v. Blodgett, 105 Conn. 192, 134 Atl. 778, 277 U. S. 1, 48 Sup. Ct. 410, in which it has been held that intangible [fol. 32] personalty, although physically outside the State of the domicil of the owner, has such a situs at the domicil that its transfer on the death of the owner may be subjected to inheritance tax under the laws of the State of domicil. First Natl. Bank of Boston v. Maine (1932) 284 U. S. —, — Sup. Ct. —; Bankers Trust Co. v. Greims, 110 Conn. 36, 147 Atl. 290; Blodgett v. New Britain Trust Co., 108 Conn. 715, 720, 145 Atl. 56; Hopkins' Appeal, 77 Conn. 644, 60 Atl. 657; Gallup's Appeal, 76 Conn. 617, 57 Atl. 699. The succession tax is "prescribed in view of the death of a domiciled resident of this State whose land within this State and whose personal property, wherever situate, is governed as to its disposition, distribution and succession, by the laws of this State." Hopkins' Appeal, supra, p. 649. This consideration extends to transfers of the nature here involved. "There is no natural right to create artificial and technical estates with limitations over, nor has the remainderman any more right to succeed to the possession of property under such deeds than legatees and devisees under a will. The privilege of acquiring property by such an instrument is as much dependent upon the law as that of acquiring property by inheritance." Keeney v. New York, supra, p. 534.

Bullen v. Wisconsin (1916) 240 U. S. 625, 36 Sup. Ct. 473, upheld subjection, by Wisconsin, to an inheritance tax on the fund under a trust the circumstances of creation (in Illinois) and the nature of which appear to be in all essential respects analogous to the Gibson trust. State court cases to a similar effect include Lines' Estate, 155 Pa. St. 378, 26 Atl. 728; Countess de Noailles' Estate, 236 Pa. St. 213, 84 Atl. 665; In re Fulham's Estate, 96 Vt. 308, 119 Atl. 433; Douglas County v. Kountze, 84 Neb. 506, 121 N. W. 593. MacClurkan v. Bugbee, 102 N. J. L. 192, 150 Atl. 575, [fol. 33] appears to be distinguishable in both factual and statutory situation, including that the statute imposes the tax only when the transfer is "made by a resident", and the transferor at the time of the execution of the trust deed was a resident of Illinois and only subsequently became domiciled in New Jersey; also, the trust deed contained no provision for the disposition of the corpus after the termina-

tion of life estates created by it, so that the remainder formed part of the decedent's estate at her death and as such was subject to the New Jersey Inheritance tax.

The representative of the Gibson estate relies largely upon the fact that the trust contract was made in New York with a New York trustee, claiming that as the contract is governed by and dependent for enforcement upon the laws of that State, it is beyond scope or control or disposition, distribution, and succession by the laws of Connecticut. However, as we view it, such resort as might possible be required to the New York laws for effectuation and performance of the contract would concern, only, "the accidental situation of some personal property which may require the aid of the laws of that State for its reduction to possession," or in some other respects, resembling in nature administration ancillary to that of the domicil. Hopkins' Appeal, supra, p. 653. Therefore, we hold this personalty trust to be subject to the Connecticut tax.

As we rule the transfers to be taxable, we are required to consider the further reserved questions—as of what date should the property be valued for the purposes of computing the tax, and is computation to be made upon the whole value of the property transferred, or upon the then present value of the life estate, or upon the then present value of the remainders? Our statute does not contain, as do some, express provision affording an answer, and there appears [fol. 34] to be a singular scarcity of reported cases involving analogous situations from which assistance may be derived. It was held in Blodgett v. Union & New Haven Trust Co., supra (p. 409), that the liability to taxation of a transfer effected by an irrevocable grant of a remainder interest depends upon the terms of the statute in effect at the time when the transfer takes place. Superficially, there is some plausibility in a contention that the value of the transfer, for the purpose of the tax, should be ascertained as of the same date, in which case the logical measure would be the deduction of the value of the reserved life estate from that of the corpus of the fund or other property which was the subject of the transfer. There are, however, considerations supporting valuation as of the date of possession and enjoyment which we regard as prevailing and determinative. The true value to the beneficiary does not

lie in the present right to the future possession or enjoyment of the trust fund or property—which is all that is vested—but in the consequences of his accession to actual possession and enjoyment and the resulting economic benefits. Therefore, it appears that the tax should be assessed upon the actual value which comes into the possession of the remainderman. In re Messerole's Estate, 162 N. Y. Supp. 414, 416; State v. Pabsts, 139 Wis. 561, 585, 121 N. W. 351; Reish v. Commonwealth, supra, p. 527; 14 Minn. Law Review, p. 616.

There is no inequity inherent in a postponement of the valuation, as well as assessment and payment of the tax, until the death of the grantor or settlor and accrual of possession in the remainderman; the latter would benefit thereby in instances in which values decreased between the transfer and the death, and it is not unfair that he be taxed upon any increase which occurred. Keeney v. New York, supra, p. 537. The tax commissioner also suggests, with [fol. 35] reason, that a tax on the present value of the remainder at date of transfer logically could be made payable immediately, and that in such case the interest on the tax to date of death would substantially equal the amount deducted as the value of the life estate. There is also the practical consideration that usually such transfers do not and cannot come to the attention of the taxing authorities until after the death of the transferor, and the difficulties incident to appraisal, then, of values as of a time long past are obvious. See Sec. 245a, Public Acts of 1931. On the whole, we conclude that the statute may and should be construed as contemplating that the basis upon which the tax is to be computed is the value of the property at the time when the remainderman becomes entitled to it in possession and enjoyment—the date of death of the transferor. Worcester County National Bank v. Commonwealth, supra, p. —, 175 N. E. p. 729; In re Fulham's Estate, 96 Vt. 308, 119 Atl. 433, 437.

We answer the questions propounded as follows: (1) to the first question in the Sewell, Bennett and Starr cases and the first and third questions in the Gibson case—that the property which was subject of transfer in each instance (in the Starr case one-half of the fund) passed by deed, grant, or gift intended to take effect in possession or en-

joyment at the death of the grantor or donor within the meaning of the Connecticut succession tax statute in force at the execution of the instrument of transfer; (2) to the second question in the Sewell, Bennett and Starr cases and the second and fourth questions in the Gibson case—that the imposition of such tax thereon transgresses no provision of the United States Constitution; (3) to the third question in the Sewell, Bennett and Starr cases and the fifth question in the Gibson case—that the property should be valued as of the date of the death of the decedent; and [fol. 36] (4) to the fourth question in the Sewell, Bennett and Starr cases and the sixth question in the Gibson case—that the tax should be computed on the valuation made as stated in the answer last preceding.

In this opinion the other judges concurred.

[fol. 37] In Supreme Court of Fairfield County

34860

Present: Hon. Frank P. McEvoy, Judge.

William H. Blodgett, Tax Commissioner of the State of Connecticut,

vs.

Appeal from Probate (Estate of Harriet D. Sewell)

Judgment—April 15, 1932

This appeal from the decree of the Probate Court for the district of Greenwich, passed on the 11th day of December, 1930, in decreeing that a certain transfer of property in trust made by the decedent, Harriet D. Sewell, by instrument executed December 28th, 1926, was not subject to the Connecticut succession tax, came to this court on the first Tuesday of February, 1931, when the appellant and The Guaranty Trust Company of New York, Executor of the estate of Harriet D. Sewell, late of Greenwich, deceased, appeared.

The court finds that due notice of the appeal was given by the appellant to The Guaranty Trust Company, Execu-

tor, as aforesaid, pursuant to an order of notice made by said Probate Court.

Said appellant having filed his reasons of appeal on February 7th, 1931, said action came thence to June 23rd, 1931, when the parties appeared and stipulated that said action be reserved for the advice of the Supreme Court of Errors on the following questions:

(1) Did the property which was the subject of transfer by the indenture dated December 28th, 1926, Exhibit A., [fol. 38] "pass by deed, grant or gift * * * intended to take effect in possession or enjoyment at the death of the grantor or donor", within the meaning of the Connecticut succession tax statute, in force at the date of the execution of said deed, or within the meaning of any subsequent amendment or revision of said succession tax statute?

(2) If said transfer is held to be taxable within the meaning of the applicable succession tax statute, would the imposition of such tax offend against Amendment XIV of the Constitution of the United States or against any other provision of said Constitution?

(3) If said transfer is held taxable, as of what date should the property be valued for the purpose of computing such tax?

(4) If said transfer is held taxable, is the tax to be computed upon the whole value of the property transferred, or upon the then present value of the reserved life estate, or, upon the then present value of the remainders?

The Supreme Court of Errors, on January 27th, 1932, rendered its judgment by answering said questions as follows:

(1) That the property which was subject of transfer passed by deed, grant, or gift intended to take effect in possession or enjoyment at the death of the grantor or donor within the meaning of the Connecticut succession tax statute in force at the execution of the instrument of transfer.

(2) That the imposition of such tax thereon transgresses no provision of the United States Constitution.

(3) That the property should be valued as of the date of the death of the decedent.

(4) That the tax should be computed on the valuation made as of the date of the death of the decedent.

[fol. 39] Said cause came thence to this Court at the present time when the parties appeared and were at issue, and were heard on appellant's motion for judgment in accordance with the advice of the Supreme Court of Errors. The court having heard the parties grants said motion.

Whereupon it is adjudged, pursuant to the advice of the Supreme Court of Errors, that the property which was subject of transfer passed by deed, grant, or gift, intended to take effect in possession or enjoyment at the death of the grantor or donor, within the meaning of the Connecticut succession tax statute in force at the execution of the instrument of transfer and that the property should be valued as of the date of the death of the decedent, and also that the tax should be computed on the valuation as of the date of the death of the decedent.

Ordered, adjudged, and decreed that the amount of the succession tax due to the State of Connecticut from said estate, computed according to the advice and direction of said Supreme Court of Errors is $21,951.33, and that the executors pay to the Treasurer of the State of Connecticut said sum of $21,951.33.

By the Court.

Michael J. Flanagan, Clerk. (Seal.)

[fol. 40] In Superior Court of Fairfield County

[Title omitted]

Order Allowing Appeal—June 22, 1932

Now comes the Guaranty Trust Company of New York, executor of the last Will and Testament of Harriet D. Sewell, deceased, stating that it is aggrieved by the decree of this court made on the 15th day of April, 1932, finding and deciding among other things that the property passing under a certain deed of trust made by the decedent

above named, executed on the 28th day of December, 1926, was a transfer intended to take effect in possession or enjoyment at the death of the grantor thereof, within the meaning of the Connecticut Succession Tax Statute in force at the execution of said transfer and as such was subject to the Connecticut Succession Tax, and moves an appeal from said decree to the Supreme Court of the United States, to be held at Washington, D. C., and has filed its petition, assignments of error and prayer for reversal pursuant to the statute and rulings of the Supreme Court of the United States in such case made and provided, and has offered a good and sufficient bond conditioned upon the payment of all costs in case it fails to make its said plea good, now therefore,

It is ordered, adjudged, and decreed that said appeal be and the same is hereby allowed and the said bond accepted and that notice of said appeal be given by some proper officer or indifferent person by mailing a true copy [fol. 41] thereof, and of said bond, and of this order, by registered mail, to the Attorney General of the State of Connecticut, and to the attorney for the State Tax Commissioner, within ten days from the date hereof; and it is further

Ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States.

Alfred C. Baldwin, Judge.

[fol. 42] In Superior Court of Fairfield County

[Title omitted]

Petition for Leave to Appeal

To the Honorable Alfred C. Baldwin, Presiding Judge of the Superior Court of the State of Connecticut:

The Guaranty Trust Company of New York, as executor of the last Will and Testament of Harriet D. Sewell, deceased, in support of this petition, shows as follows:

1. Your petitioner is the executor of the last Will and Testament of Harriet D. Sewell, deceased.

2. That heretofore there was conducted within the State of Connecticut a statutory proceeding for the appraisal of the estate of said Harriet D. Sewell, deceased, and the determination of any inheritance tax which might be due thereon to the State of Connecticut upon the property of said decedent at the time of her death, and especially upon certain property transferred by the decedent by a certain deed of trust dated and delivered December 28, 1926. That a determination of said question was made by the Probate Court for the District of Greenwich and said Court on or about the 11th day of December, 1930 made an order and decree that the property passing under said deed of trust was not subject to the Connecticut Succession Tax and thereupon allowed and approved a computation of such tax upon other property left by the decedent in conformity to said decree.

3. That thereafter William H. Blodgett, Tax Commissioner of the State of Connecticut, on or about the 29th [fol. 43] day of December 1930 moved an appeal from said order and decree to the Superior Court held in and for the County of Fairfield, Connecticut, and said appeal was allowed by order of said Probate Court on or about the 30th day of December, 1930 and said William H. Blodgett, Tax Commissioner aforesaid, thereupon filed his reasons of appeal in the said Superior Court of Fairfield County.

4. That while said proceeding in the Superior Court is designated an appeal from the Court of Probate and the record of the proceedings in the Court of Probate is not brought up to the said Superior Court and is no part of the subsequent proceeding because the said Court of Probate is not a court of record and because on the appeal to the Superior Court, which is a court of general jurisdiction and is a court of record, the case is tried and considered de novo, and new evidence is taken and the first record made in the proceeding is that made in the Superior Court.

5. That thereafter by written stipulation between the parties, the parties agreed and requested the Superior Court that the cause should be reserved for the advice of the Supreme Court of Errors upon the statement of facts

and questions of law set forth in a certain stipulation between the parties, dated April 14, 1931, as thereafter amended by agreement undated but filed in the office of the Clerk of the Superior Court on June 19, 1931.

6. That thereafter by order of Judge Edwin C. Dickinson of said Superior Court, the said questions were reserved for the advice of the said Supreme Court of Errors as to what judgment, decree or decision should be made and rendered thereon by said Superior Court. That said stipulations and reservations were in accordance with the [fol. 44] practice in the State of Connecticut whereby a cause pending in the Superior Court, in which the parties are agreed upon the facts and the issues of law, may be heard in the first instance by the Supreme Court of Errors and said Supreme Court of Errors advised the Superior Court of the correct answers to the questions of law upon the stipulated facts and the judgment of the Superior Court is entered in accordance with said advice.

7. That the appeal of the said William H. Blodgett, Tax Commissioner as aforesaid, and the questions of law stated in said stipulation were argued in the Supreme Court of Errors and the said Court rendered its opinion and advice to the Superior Court thereon on or about the 27th day of January, 1932, and upon such opinion and advice and in conformity therewith, the Superior Court entered judgment on or about the 15th day of April, 1932, wherein and whereby it was among other things adjudged and decreed that the property passing under said deed of trust, dated December 28, 1926, was subject to the provisions of the Connecticut Succession Tax in force at the date of the execution of said deed and was held to be taxable within the meaning of the provisions of said statute. And furthermore, that the imposition of such tax thereon transgresses no provision of the United States Constitution.

8. That according to the practice in the State of Connecticut above set forth, the said judgment and decree so entered by the Superior Court, Fairfield County, upon the advice and opinion of the Supreme Court of Errors aforesaid is a final judgment or decree in a suit in the highest court of the State in which the decision could be had.

[fol. 45] 9. That the proceeding in which said judgment and decree was entered was one in which the validity of a

statute of the State of Connecticut was drawn in question on the ground that the said statute was repugnant to various provisions of the Constitution and laws of the United States and particularly to the Fourteenth Amendment to said Constitution, in that said Succession Tax Act, being Chapter 190 of the Laws of 1923, constituted the taking of property without due process of law in violation of the said Fourteenth Amendment to the Constitution of the United States and denied the equal protection of the laws, and that said statute of the State of Connecticut as so construed was invalid for such reasons in levying and providing for the collection of such tax.

10. That the opinion and advice of the Supreme Court of Errors and the judgment and decree of the Superior Court, Fairfield County, entered thereon were in favor of the validity of said state statute as so construed and of the succession tax attempted to be levied thereunder and overruled the objections made by your petitioner on the constitutional grounds as above set forth, and the determination of this constitutional question was necessary to the determination of the case and the judgment and decree entered was based thereon.

Wherefore your petitioner moves an appeal and does hereby appeal from said judgment of the Superior Court, Fairfield County, dated April 15, 1932, to the United States Supreme Court, to be held at Washington, D. C. and hereby gives a bond with sufficient surety to prosecute said appeal to effect.

Dated June 21st, 1932.

Guaranty Trust Company of New York, by W. C. Bloom, Assistant Trust Officer.

[fol. 46] *Duly sworn to by W. C. Bloom. Jurat omitted in printing.*

[fol. 47] In Superior Court of Fairfield County

[Title omitted]

Stipulation Waiving Notice, etc.

It is hereby stipulated that the application of the Guaranty Trust Company of New York, as executor of the last

Will and Testament of Harriet D. Sewell, deceased, for leave to appeal to the United States Supreme Court from the judgment of this Court in this cause entered on April 15, 1932, may be granted and notice of such application is hereby waived.

Dated June 18, 1932.

Wm. H. Blodgett, Tax Commissioner, by Farwell Knapp, Assistant Tax Commissioner, His Attorney.

[fol. 48] Citation, in usual form, omitted in printing.

[fol. 49] In Superior Court of Fairfield County

[Title omitted]

Assignments of Error

Now comes the petitioner herein, the Guaranty Trust Company, Executor of the last will and testament of Harriet D. Sewell, deceased, and shows that in acting upon the opinion and advice of the Supreme Court of Errors and in entering a judgment and decree in the above entitled cause in favor of respondent and against the petitioner, the Superior Court of Fairfield County erred in the following particulars:

First. In holding that the property which was the subject of transfer by the indenture dated December 28th, 1926, passed by deed, grant or gift intended to take effect in possession or enjoyment at the death of the grantor or donor.

Second. In failing to hold that the property which was subject of transfer by the indenture dated December 28th, 1926, passed absolutely as of the date of said transfer and not at the death of the grantor.

Third. In failing to hold that at the decedent's death she retained no interest in the property, the transfer of which was subject to the succession tax imposed by Chapter 190 of the Public Acts of 1923 of the State of Connecticut.

Fourth. In holding that the tax imposed by Chapter 190 of the Public Acts of 1923, as applied to the stipulated facts

in this cause, was valid and did not deprive petitioner of property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution.

[fol. 50] Fifth. In holding that the tax imposed by Chapter 190 of the Public Acts of 1923, as applied to the stipulated facts in this cause, was valid and did not deny to petitioner and those claiming under it the equal protection of the laws within the meaning of the Fourteenth Amendment of the Constitution of the United States.

Sixth. In holding that the tax as imposed did not impair the obligation of a contract, to wit: the trust deed of December 28, 1926, within the meaning of Section 10 of Article I of the Constitution of the United States.

By reason whereof your petitioner has petitioned for leave to appeal and prays that said judgment and decree entered by the Superior Court of Fairfield County, Connecticut, be reversed as to the foregoing matters and that judgment be directed to be entered in favor of your petitioner, and for costs.

Dated June 22, 1932.

Guaranty Trust Company of New York, Executor of Last Will and Testament of Harriet D. Sewell, Deceased, by Hill, Lockwood & Redfield, Attorneys for Appellant.

Allowed June 22, 1932.

Alfred C. Baldwin, Judge

[fol. 51] In Superior Court of Fairfield County

[Title omitted]

Certificate of Chief Justice of Supreme Court of Errors

I, the undersigned, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court of the State of Connecticut, do hereby certify unto Honorable Supreme Court of the United States that in deciding the question as to whether the tax imposed by Chapter 190 of the Public Acts of 1923 was contrary to the Fourteenth Amendment or to any other provision of the Federal Constitution, the Court considered the due process and equal

protection clauses of the Fourteenth Amendment to the Constitution and also the contract clause under the Tenth Section of the First Amendment of said Constitution, and that the decision in said case and the judgment entered thereon on the advice and opinion of the Supreme Court of Errors was in favor of the validity of Chapter 190 of the Public Acts of 1923 and not in violation of either of said Amendments to the Constitution.

I do further certify that according to the practice in the State of Connecticut the said judgment rendered in the Superior Court of the State of Connecticut for the County of Fairfield on April 15, 1932 upon the advice and opinion of the Supreme Court of Errors is a final judgment and decree of the highest court of the State of Connecticut in [fol. 52] which a decision in the suit could be had.

It is hereby directed that this certificate be filed in the office of the Clerk of said Superior Court and shall form a part of the record to be certified by said Clerk to the Supreme Court of the United States upon the appellant's appeal herein.

Dated June 22, 1932.

Wm. M. Maltbie, Chief Justice.

[fol. 53] In Superior Court of Fairfield County

[Title omitted]

Stipulation Respecting Transcript of Record

It is hereby stipulated by and between the attorneys for the parties in the above entitled action that the papers to be transmitted to the Supreme Court of the United States by the Clerk of the Superior Court of the State of Connecticut, Fairfield County, pursuant to an order of said Superior Court dated and issued on June 22, 1932, are the following, and that this stipulation shall take the place of the præcipe required to be filed by counsel for the respective parties under and pursuant to Rule Ten of the Rules of the Supreme Court of the United States:

1. The printed record used in the Supreme Court of Errors on the reservation of the above case.
2. The opinion of the Supreme Court of Errors.
3. The rescript of the said Supreme Court answering the questions propounded in said reservation.

4. The judgment entered by the Superior Court on April 15, 1932 in conformity to the advice and opinion of the Supreme Court of Errors.

5. The petition and order for leave to appeal and consent thereto, the assignments of error, bond and certificate by the Honorable William M. Maltbie, dated June 22, 1932 [fol. 54] and filed with the Clerk of this Court on June 22, 1932.

6. The citation to the respondent, William H. Blodgett, Tax Commissioner, dated June 22, 1932, with proof of service of same on said respondent and his attorney, filed with the Clerk of this Court.

7. The present stipulation.

It is further stipulated that the papers annexed hereto are true and correct copies of the papers described in paragraphs 1 to 7 inclusive of this stipulation. That with this stipulation they constitute the complete transcript of the record to be certified to the Supreme Court of the United States at Washington, and that the Clerk of the Superior Court of the State of Connecticut for Fairfield County may certify this transcript of record and other papers without further formality.

Dated June 23rd 1932.

Hill, Lockwood & Redfield, Attys. for Applt. Farwell Knapp, Atty. for Tax Commissioner. Warren B. Burrows, Attorney General of the State of Connecticut.

[fols. 55 & 56] Bond on appeal for $250.00 omitted in printing.

[fol. 57] In Superior Court of Fairfield County

[Title omitted]

Admission of Service

Due service of a copy of the citation and bond on appeal in the above entitled proceeding, dated June 22nd, 1932, is hereby admitted.

Dated June 27th, 1932.

Farwell Knapp, Attorney for the State Tax Commissioner.

[fol. 58] IN SUPERIOR COURT OF FAIRFIELD COUNTY

[Title omitted]

ADMISSION OF SERVICE

Due service of a copy of the citation and bond on appeal in the above entitled proceeding, dated June 22nd, 1932, is hereby admitted.

Dated June 30th, 1932.

Warren B. Burrows, Attorney General of the State of Connecticut.

[fol. 59] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 60 & 61] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 12, 1932

Comes now the appellant in the above entitled cause and adopts its assignments of error as its statement of the points to be relied upon in the argument in this Court.

Appellant further represents that the whole record, as filed, is necessary for the consideration of the case.

Gregory Hankin, Gregory Hankin, Counsel for Appellant.

[fol. 62] [File endorsement omitted.]

Endorsed on cover: File No. 36,914. Connecticut Superior Court, Fairfield County. Term No. 217. The Guaranty Trust Company of New York, as executor of the last will and testament of Harriet D. Sewell, deceased, appellant, vs. William H. Blodgett, Tax Commissioner. Filed July 12, 1932. File No. 36,914.